

Issuance Date: _____

Effective Date: _____

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Riverside Drive Property (Parcel # L4910 015 0000 97)	:	
Mr. James Pickup	:	<u>Director's Final Findings</u>
Mr. Larry Green	:	<u>and Orders</u>
Mr. Allen Green	:	

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are hereby issued to Mr. James Pickup, Mr. Larry Green, and Mr. Allen Green ("Property Owners"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Section 3734.02, Ohio Administrative Code ("OAC") Rule 3745-27-03(B), and OAC Rule 3745-27-05(A)(4).

II. PARTIES

These Orders shall apply to and be binding upon the Property Owners and successors in interest liable under Ohio law. No changes in ownership relating to the Riverside Drive Property, as hereinafter defined, shall in any way alter the Property Owners' obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3734. and the rules promulgated thereunder. Unless otherwise stated, all OAC citations shall refer to rules in effect on the date of these Orders.

IV. FINDINGS

The Director of Ohio EPA ("Director") has determined the following findings:

1. The Property Owners own parcel number L4910 015 0000 97 located on Riverside Drive ("Riverside Drive Property") in St. Clair Township, Butler County, Ohio.

2. On December 5, 2005, Mr. Robert Marsh of the Southwest Regional Water District (SRWD) in Butler County, Ohio, submitted to the Director a request for authorization to alternatively dispose up to 3,500 tons of waste sand from their water treatment plant (“WTP sand”) as engineered structural fill at the Riverside Drive Property. The WTP sand is solid waste.
3. ORC Section 3734.01(E) defines “solid wastes,” in pertinent part, to mean “such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations....”
4. ORC Section 3734.01(F) defines “disposal,” in pertinent part, to mean “the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any solid waste...into or on any land or ground or surface water or into the air....”
5. ORC Section 3734.01(N) defines “facility,” in pertinent part, to mean “any site, location, tract of land, installation, or building used for incineration, composting, sanitary landfilling, or other methods of disposal of solid wastes....”
6. The activities described in Finding 2, above, and in SRWD’s request constitute disposal of solid waste at a facility.
7. ORC Sections 3734.02(C), 3734.05(A)(1), and 3734.05(A)(2), and OAC Chapters 3745-27 and 3745-37 require that a permit and license be obtained prior to establishment or modification of a solid waste facility.
8. The activities described in Finding 2, above, and in SRWD’s request constitute establishment or modification of a facility and require that a permit and license be obtained prior to initiating such activities.
9. OAC Rule 3745-27-05(A) specifies the methods of solid waste disposal that are authorized in Ohio. This rule authorizes sanitary landfilling, incineration, and composting as acceptable disposal methods. In addition, OAC Rule 3745-27-05(A)(4) states that solid wastes may be disposed as engineered fill or by land application, provided the Director determines that such alternative methods will not create a nuisance or harm human health or the environment and are capable of complying with other applicable laws.
10. The proposed disposal method, described in Finding 2, above, and in SRWD’s request is a method other than sanitary landfilling, incineration, or composting, and, therefore, requires authorization from the Director pursuant to OAC Rule 3745-27-05(A)(4).

11. The disposal of solid waste by the method described in Finding 2, above, and in SRWD's request can be performed without creating a nuisance or harming human health or the environment, and in compliance with other applicable laws, provided the activities are performed in accordance with SRWD's request, as received on December 5, 2005, and the orders specified below.
12. Pursuant to ORC Section 3734.57(A), the owner or operator of a solid waste disposal facility must collect and remit to the state a disposal fee for each ton of solid waste disposed at the facility.
13. Pursuant to ORC Section 3734.57(B), the solid waste management policy committee of a single or joint solid waste management district is authorized to levy a disposal fee on solid wastes disposed at solid waste disposal facilities located within the solid waste management district. The Butler County Solid Waste Management District ("BCSWMD") has levied a disposal fee. ORC Section 3734.57(E) further requires the owner or operator of a solid waste disposal facility operating in a solid waste management district where disposal fees have been ratified to collect and remit to the solid waste management district the fees on each ton of solid waste disposed at the facility.
14. Pursuant to ORC Section 3734.573(A), the solid waste management policy committee of a single or joint solid waste management district is authorized to levy a fee on each ton of solid waste generated within the district. BCSWMD has levied a generation fee of \$2.00 per ton of solid waste generated within the district. The WTP sand is generated within BCSWMD. ORC Section 3734.573(E) requires the owner or operator of the solid waste disposal facility where the solid waste is disposed to collect and remit the fee.
15. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), the Director, by order, may exempt any person generating, collecting, storing, treating, disposing of, or transporting solid wastes in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health or safety or the environment from any requirement to obtain a permit or license or comply with other requirements of ORC Chapter 3734. and any rules adopted thereunder.
16. Based upon a review of the December 5, 2005 request, granting the Property Owners an exemption from the requirements to obtain a permit and license, as specified in Finding 7, is unlikely to adversely affect public health or safety or the environment, provided the Property Owners comply with the following Orders.

17. Based upon a review of the December 5, 2005 request, granting the Property Owners an exemption from the requirements to collect and remit the state disposal fee and the solid waste management district disposal and generation fees, as specified in Findings 12, 13, and 14, is unlikely to adversely affect public health or safety or the environment, provided the Property Owners comply with the following Orders.

V. ORDERS

1. Pursuant to OAC Rule 3745-27-05(A)(4), the Property Owners are hereby authorized to use WTP sand as engineered fill material at the Riverside Drive Property, as specified in Finding 2 and SRWD's request, as an alternative disposal method.
2. The Property Owners shall utilize the WTP sand in accordance with the following placement procedures:
 - a. The WTP sand shall be placed according to the proposal submitted by SRWD on December 5, 2005.
 - b. The WTP sand shall be placed in such a manner as necessary to prevent creation of nuisance caused by odor, and to prevent blowing sand, surface water runoff, or any release of contaminants to the environment.
 - c. The WTP sand shall be placed during appropriate weather conditions to minimize blowing sand, odors, and surface water runoff.
 - d. The WTP sand shall not be placed within ten (10) feet of any ground water wells at the Riverside Drive Property.
3. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), the Property Owners are hereby exempted from the requirements contained in ORC Sections 3734.02(C), 3734.05(A)(1), and 3734.05(A)(2), and OAC Chapters 3745-27 and 3745-37 to obtain a permit and license to establish and operate a solid waste facility.
4. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), the Property Owners are hereby exempted from the requirement of ORC Section 3734.57(A) to collect and remit the state solid waste disposal fee on WTP sand disposed at the Riverside Drive Property in accordance with the request and these Orders.
5. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), the Property

Owners are hereby exempted from the requirement of ORC Section 3734.57(E) to collect and remit the district solid waste disposal fee levied pursuant to ORC Section 3734.57(B) on WTP sand disposed at the Riverside Drive Property in accordance with the request and these Orders.

6. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), the Property Owners are hereby exempted from the requirement of ORC Section 3734.573(E) to collect and remit the district solid waste generation fee levied pursuant to ORC Section 3734.573(A) on WTP sand disposed at the Riverside Drive Property in accordance with the request and these Orders.
7. The authorization granted in Order 1 and the exemptions granted in Orders 3, 4, 5, and 6 apply only to the use of WTP sand resulting from treatment of water at SRWD's water treatment plant as engineered fill at the Riverside Drive Property. This authorization shall not be construed as approval for use of other materials or additional waste sand resulting from future activities. Use of any such additional materials shall not occur unless the Property Owners obtain subsequent approval.
8. If the WTP sand is not used in accordance with these Orders and SRWD's request, the WTP sand shall be managed and/or disposed in accordance with all applicable requirements.
9. Ohio EPA, Southwest District Office and the Butler County Health District shall be notified not later than five (5) days prior to the start of the project so that use of the WTP sand can be routinely inspected by Ohio EPA, Southwest District Office and the Butler County Health District.
10. Authorization to conduct the activities authorized in these Orders and all exemptions contained in these Orders shall expire eighteen (18) months after the effective date of these Orders.
11. Nothing in these Orders shall be construed to authorize any activity, method, or waiver from the requirements of ORC Chapter 3734. or the regulations promulgated thereunder, except as expressly provided herein. These Orders shall not be interpreted to release the Property Owners from responsibility under ORC Chapters 3704., 3734., or 6111.; under the Federal Clean Water Act or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable requirements for remedying conditions resulting from any release of contaminants to the environment.

VI. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to the Property Owners.

VII. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal, or equitable action as deemed appropriate and necessary, including seeking penalties against the Property Owners for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require the Property Owners to perform additional activities pursuant to ORC Chapter 3734. or any other applicable law in the future. Nothing herein shall restrict the right of the Property Owners to raise any administrative, legal, or equitable claim or defense with respect to such further actions that Ohio EPA may seek to require of the Property Owners. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations that may occur at the Riverside Drive Property.

IT IS SO ORDERED:

Ohio Environmental Protection Agency

Joseph P. Koncelik
Director